



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

WA No. 216/2018

1. The Union of India,
Represented by the Secretary to the Govt. of India,
Ministry of Defence, New Delhi-110001.
2. The Director General,
Central Reserved Police Force,
Govt. of India, New Delhi.
3. The Deputy Inspector General of Police,
Central Reserved Police Force, Khatkhuti,
Karbi Anglong, Assam.
4. Balram Shil, Commandant,

.....Appellants.

-Versus-

.....Respondent.

BEFORE
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellants:

Mr. R.K. Dev Choudhury,

Dy.S.G.I.Advocate.
For the Respondent: Mr. D.R. Gogoi,
Ms. S.E. Ahmed.Advocates.
Date of Hearing : 11.04.2023
Date of Judgment : **28th April, 2023**

JUDGMENT AND ORDER

[Sandeep Mehta, CJ]

This instant intra-Court appeal is directed against the judgment and final order dated 18.01.2018 passed by the learned Single Bench in WP(C) No.4241/2009 whereby, the writ petition was accepted and the order of penalty dated 30.09.2008 whereby the respondent/writ petitioner was removed from service pursuant to a disciplinary proceeding was quashed. The departmental inquiry against the respondent [hereinafter referred to as the Delinquent Officer (DO)] was initiated through charge memo dated 26.06.2008. The substance of charges attributed to the respondent DO was that he, while proceeding on 15 days casual leave from 06.06.2008 onwards, was found in possession of 23 live rounds of 5.56 Insas Rifle at the Jammu Railway station when search was taken by the RPF and local police officials of his luggage. Another allegation was leveled that the respondent DO did not furnish the information to his higher authorities either in 31 Bn or 151 Bn regarding illegal retention of 23 live rounds of 5.56

Insas Rifle. The enquiry was concluded holding that both the charges were proved beyond reasonable doubt.

2. Accepting the finding of the inquiry report dated 28.08.2008, the Commandant, being the disciplinary authority passed the order dated 30.09.2008, inflicting upon the respondent, punishment of removal from service. The said order was challenged by the respondent by filing the captioned writ petition mainly on two grounds. *Firstly*, the department failed to lead any cogent evidence whatsoever so as to substantiate the charges. None of 6(six) prosecution witnesses examined during inquiry was a witness to the recovery of the live rounds allegedly effected from the baggage of the respondent DO. The RTO Inspector Khawja Abdul Islam who was present during the alleged recovery was not examined in evidence. The second contention advanced on behalf of the respondent DO was that he was unfamiliar with Hindi language and that the enquiry was held in Hindi without providing any defence assistance and thus, the DO was deprived from the opportunity to cross-examine the witnesses and was also unable to defend himself properly. Thus, the disciplinary proceedings were questioned on the ground of being unfair and arbitrary & in violation of the principles of natural justice. The learned Single Bench, examined the entire material available on record and concluded that the enquiry was held in gross deference to the requirement of Rule 27 of the CRPF Rules, 1955 inasmuch as, defence assistance was not provided to the DO who was having rudimentary knowledge of Hindi being a

Boro tribe person from interior Assam and that he was prevented from a fair opportunity of defending himself as provided under Rule 27(c) of the CRPF Rules, 1955. Further conclusion was drawn by the learned Single Bench that the inquiry report dated 28.08.2008 did not indicate that the I.O. based his conclusions with the reference to any piece of material evidence recorded by him during the inquiry. Paragraphs 11 and 12 of the impugned judgment are germane for deciding the instant appeal and hence the same are reproduced hereinbelow for the sake of ready reference:-

“11. The recovery of live bullets from the delinquent’s baggage may warrant a Disciplinary Proceeding but it must be established that the CRPF constable himself kept the bullets in his bag. This is particularly necessary in the context of the petitioner’s stand to the effect that he had not locked his bag and therefore, some miscreant secretly placing the bullets without the delinquent’s knowledge, is a distinct possibility. I feel that such a scenario cannot entirely be ruled out because there is no credible evidence about bullets being recovered from the delinquent’s bag or his role on the matter.

12. The Disciplinary Proceeding suffered serious legal infirmity as it was in deviation of the procedure laid down by Rule 27 of the CRPF Rules. Moreover the absence of defence assistance has resulted in denial of fair opportunity to the delinquent to rebut the charge or even to cross-examine the prosecution witnesses. The prosecution witnesses are of the hearsay category and more importantly there is no implication of the delinquent in their testimony. Hence it must be declared that the conclusion is not based on any relevant evidence. The Disciplinary Proceeding is accordingly found to be vitiated and the penalization of the delinquent upon such vitiated proceeding in my perception, will not be justified.”

3. Criticizing the aforesaid finding in this intra-Court writ appeal, learned Dy.S.G.I. Shri R.K.D. Choudhury vehemently and fervently argued that the standard of proof required to

bring home the charges in a disciplinary proceeding cannot be equated with that required to bring home the charges in a criminal trial. As per Shri Choudhury, the charges in disciplinary proceedings can be proved by mere preponderance of probabilities. It was his contention that the evidence of six witnesses who were examined during the inquiry, was sufficient to bring home the charges. He urged that the learned Single Bench was not justified in re-appreciating the evidence and substituting its own conclusions upon the conclusions drawn in the inquiry report. He urged that the impugned order which is based on re-appreciation of evidence, is liable to be set aside.

4. Per contra, learned counsel Mr. D.R. Gogoi and Ms. S.E. Ahmed representing the respondent, vehemently and fervently opposed the submissions advanced by the learned Dy.S.G.I. They submitted that the inquiry officer, examined 6 witnesses in support of the charges, but none of these witnesses was present at the Jammu Railway station when the so called search was made and the live ammunitions were allegedly recovered from the baggage of the DO. He thus urged that, the learned Single Judge was perfectly justified in interfering with the order imposing penalty of removal of service upon the DO as there was total absence of evidence in the enquiry proceedings so as to bring home the charges. On these submissions, learned counsel representing the respondent, implored the Court to dismiss the appeal and affirm the order passed by the learned Single Bench.

5. We have given a thoughtful consideration of the submissions advanced at Bar and have gone through the impugned order and the material placed on record.

6. Suffice to say that the charges attributed to the DO were founded on an allegation that while he was proceeding on 15 days casual leave w.e.f. 06.06.2008, his baggage was searched at the Jammu Railway station and 23 live rounds of ammunition were recovered therefrom. Needless to say that substantive evidence would be required to bring home such charges and they could not have been proved by mere conjecture and surmises. It is not in dispute that neither the FIR if any registered after the seizure nor the seizure memo whereby the live rounds were allegedly recovered were proved during the course of enquiry. No documentary evidence was brought on record to prove that the recovered ammunition was taken into possession by the CRPF authorities. We have been taken through the evidence of the six witnesses examined during the course of the enquiry, namely, Ashim Marti (PW-1), Hans Rai (PW-2), Constable Surender Kumar Saine (PW-3), Swarn Singh (PW-4), Surendra Pal Singh (PW-5) and Deputy Invigilator Bhup Singh (PW-6). Admittedly, none of these witnesses was present at the time when the seizure was allegedly made from the baggage of the DO at the Jammu Railway station. It is not in dispute that no defence assistance was provided to the DO as warranted by Rule 27 of the CRPF Rules, 1955.

7. Hans Rai (PW-2), in his examination-in-chief was put the question below and the answer solicited makes it clear that he did not see the recovery being made:-

“Q- Did rounds were recovered from inside the bag of Force No-055130375 Saran Narzary in front of you?”

A- No, Sir, rounds were recovered by RTO in the police station and RTO reported this and handed over the above mentioned rounds.”

The Deputy Invigilator Bhup Singh admitted that there no preliminary report was lodged regarding the recovery of 23 live rounds. Thus, the witnesses examined by the department did not give even a semblance of evidence to prove the factum of recovery of live rounds from the DO at the Jammu Railway station.

8. The statement of the DO which has been treated to be a confession, was recorded in Hindi. There is no dispute that the DO belongs an interior Boro land tribe of Assam and claims to have only rudimentary knowledge of Hindi. Thus, manifestly the confessional statement could not have been admitted in evidence more so because the DO was not provided any defence assistance. In addition thereto, upon a perusal of the departmental enquiry report, which has been extracted in the order passed by the learned Single Judge, we find that the Inquiry Officer did not give any reference to either the statement of the witnesses examined or the statement/contention of the DO while concluding that the charges were proved beyond reasonable doubt or by preponderance of probabilities.

9. The Commandant, vide order dated 30.09.2008, accepted the findings of the inquiry report without any significant discussion and also placed reliance on the admission made by the DO. It may be reiterated at the cost of repetition that the conclusions of the Inquiry Officer were not based on any substantive evidence. The confession/admission of the DO could not have been admitted and read against him because he was not provided any defence assistance and furthermore, the confession was extracted in Hindi which admittedly was not a language with which the DO was conversant.

10. Thus, we are of the firm view that the learned Single Bench was perfectly justified in accepting the writ petition by the impugned judgment dated 18.01.2018 and setting aside the order of penalty imposed upon the DO which suffers from a patent infirmity of being based on no evidence and also being tainted by the denial of opportunity of being defended to the respondent DO. The judgment dated 18.01.2018 which under challenge does not suffer from any infirmity warranting interference in this intra-Court writ appeal.

11. Consequently, the appeal fails and is dismissed being devoid of merit. No order as to cost.

Sd/- Parthivjyoti Saikia
JUDGE

Sd/- Sandeep Mehta
CHIEF JUSTICE

Comparing Assistant